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Dealing with disputes over contractual agreements

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ABSTRACT

Contractual agreements and projects comprise a significant part of documents and contracts which include rights and duties of contracting parties. The present research aimed to assess how disputes over contractual agreements were handled. Contracting is among continuous contracts through which execution operations will conduct and complete for a definite duration. So, the marked role of time in contractual agreements must be regarded. Regarding the importance of time in these contracts, solving disputes between contractor and subcontractor has been anticipated by means of arbitration in the initial stages under Article 53 of general conditions of contractual agreements. Under Article 157 of the Constitution, as well as under clauses 1-3 of the Civil Procedure Code, the department of justice is considered as the official jurisdiction for dealing with public grievances. However, arbitration is a non-official jurisdiction recognized by the law which attempts to solve disputes by common people; moreover, the rendered judgment through arbitration is supported by the law and needs to be enforceable by the judiciary. Today, working skillful and experienced arbitrators in International Commerce Chambers (I.C.C) or arbitration teams in different parts of the world are making attempt to handle disputes between either legal or natural persons.

Key words: dealing with disputes, contractual agreements, department of justice.

Introduction

Contractual agreements comprise a significant part of documents and contracts which include rights and duties of contracting parties. Regarding the project type, contractual agreements may have the same format or prepared by the contracting parties, but nature of the projects as well as duration of the contract needs close co-operation between the parties anyhow.

Arising dispute between contracting parties over interpreting duties and rights stated in the contract seems totally unavoidable even when they act in good faith. Although amicable solutions such as negotiation and conciliation, arbitration, mediation, dispute settlement board and other alternatives are infinitely preferable, asserting criminal and legal claims would be unavoidable in most cases. The most common claims concerning contractual agreements are as follow (Amiri):

1. Demanding (financial statement)
2. Preservation of evidence
3. Claiming compensation
4. Arbitration clause and annulment of arbitration award
5. Order for not paying the guarantee
6. Writ of injunction to pay the value of guarantee
7. Issuing order regarding abatement of nuisance
8. writ of injunction for performance of obligation

9. cancellation of the contract
10. revocation of deed
11. Objection to the process of contractor selection and revocation of it
12. Nullifying illegal acts
13. Demanding for ransom and compensation resulting from possession and confiscation of investment
14. Demanding for ransom resulting from conducting the project
15. Writ of injunction to amend accomplished acts

The effect of time on execution of contractual agreements

Contractual agreements are among continuous contracts through which executive operations need to be accomplished during a definite time. The importance of time needs to be taken into account for this type of contracts. Therefore, duration of contractual agreements is clearly stipulated in the contract in order to represent its beginning and end for contracting parties. However, most contractual agreements will not fulfilled in the definite time and delays generally depend upon a variety of factors (Kashani, 2007).

Competent authorities for resolving disputes over contractual agreements

Under Article 157 of the Constitution, as well as clauses 1-3 of the Civil Procedure Code, department of justice is considered as the official authority to handle public claims. However, the arbitration is also regarded as a non-official authority having competence to handle disputes which its rendered judgment is not only supported by the law but also is enforceable by the judiciary.

Nowadays, there are a significant number of international Chamber of Commerce (I.C.C) as well as arbitration teams in different parts of the world that are making attempt to resolve disputes among natural and legal persons by their experienced and skillful experts. Courts' failure to handle claims properly in terms of observing principles of the civil procedure code is the main reason behind increasing request of people to refer their cases to arbitration rather than a court. In fact, expediting the settlement of an action, proficiency, and being economical are among advantages of arbitration which clearly distinguishes this non-official authority from the department of justice (Imami).

The role of arbitration in dealing with disputes over contractual agreements

Regarding the importance of this non-official authority, solving disputes between contractor and subcontractor has been anticipated through arbitration in the initial stages under Article 53 of general conditions of contractual agreements. However, the arbitration failed to resolve disputes between the contractor and subcontractor for two reasons and created a serious dilemma. The first problem is resulting from Article 139 of the Constitution as well as Article 457 of the civil procedure code; moreover, the second problem is related to how Article 53 concerning the general conditions of the contractual agreement is written (Bazari Foumeshi, 2007).

The concept of "dispute board" as an external foundation in contractual agreements

By the term "dispute board" is meant an authority which is responsible to promptly resolve the least disputes between contracting parties during the execution of an agreement in order to not only secure the contract from early termination because of minor or major problems but also it is to stop the problems from becoming a dilemma or unresolved tensions. Its great advantage is that both contractor and subcontractor will not argue with each other until the end of the project, to put it simply, it may minimize arbitration as well (Rafie, 2013).

Fortunately, an objective approach has been identified for the strategic committee for revision of agreement, which tries to amend general terms of contracts, however there is still no recommended specific name or feature for it. On the one hand the body have to perform its function during the execution of contractual agreements, but on the other, disputes are tantamount to impedimenta which bring the project to a halt, so the term "solution-making body" seems to be an appropriate title that it is also different from arbitration.

Since contracts are vary in size, the body needs to be organized proportionate to amount and size of the agreement. Hence, one or three members may comprise the body. It is worth mentioning that regarding its authorities the body can play a marked role in expediting the settlement of an action (Amini, 2009).

Hence, the third party is given some authorities in order to prevent contracting parties from wasting their rights or give them time for preservation of evidence. Rules concerning interlocutory order before arbitration may complete arbitration conditions provided in the agreement. When the arbitrator is not allowed to issue a temporary order or issuance of only some orders is permitted for them, arbitration condition is referred to the national law or arbitration regulations; however, interlocutory order before arbitration can fill the gap. The possibility of its enforcement by public courts increases when the interlocutory order is issued by an arbitrator and turned into a well-reasoned judgment (Qasem Zade, 2007).

Conditions comprising recourse to the interlocutory order before arbitration has more independence than arbitration comprising interlocutory order**.** What justifies the independence is an expedition into handle requests of contracting parties in order to issue an interlocutory or provisional order. To take an example, regarding the appointment period of the third person, the interlocutory order has to be issued up to a maximum of 38 days as of the date the request is issued, while, minimum time for assessment of the commerce chamber international court of arbitration is 70 days, regardless of overall duration for bringing the claim to the court (Mir Shafiyan).

Temporary mandatory solutions

The function of arbitration methods for settlement of disputes in the international contractual agreements is divided into two groups. The first group does not directly control how disputes are being dealt with, but it is taken into account either as a solution against restriction of the contracting parties' right or preservation of evidence which may be used as the basis of legitimacy claims of one of the parties for any possible future dispute. The second group contains a mandatory solution for resolving the dispute. Its temporary aspect is a defining characteristic of the solution (Sahebi, 1997).

The following is a brief report on temporary mandatory solutions:

Over the past 100 years, interference of the third person in the stage right before arbitration in the international contractual agreements in order to solve any possible future disputes between the contractor and subcontractor have been anticipated; however, among used mechanisms for this purpose, two methods have considerable theoretical and practical importance. Regarding the first method, assignments on resolving disputes over construction agreements are given to one or more skilled, independent experts. However, in the second group the subcontractor assigns an engineer or architect to handle the dispute whom the subcontractor will also be liable to pay their wage (Mo'meni, 2015).

Exceptions to the necessity of recourse to advisory engineers or the committee for settlement of disputes for international contractual agreements before recourse to arbitration

1. Failure to obey decision of the engineer advisor or the settlement dispute committee by one of the parties to the contract

Regarding operations of civil engineering, decision of the consultant engineer becomes indispensable when neither the subcontractor nor the contractor put in an application for the transfer of the case to another court during the due time under Article 67-1. Therefore, each party will have the right to recourse to the arbitration under Article 67-3 on the condition that each of the contracting parties will not observe the rendered judgment (Kamkar 1993).

2. Failure to select a consultant engineer or members of the dispute settlement committee

Despite concluding an international contractual agreement, the case is occurred when no third party has been assigned to solve the dispute before recourse to arbitration or one of the contracting parties to the contract has not been informed. It seems obvious that the claimant will have no alternative unless recourse to arbitration.

3. Mutual agreement for direct recourse to the arbitration

If contracting parties agree on direct recourse to arbitration it requires to recourse a consultant engineer or the dispute settlement committee.

4. An exception resulting from the limit of the consultant engineer or the dispute settlement committee

Another example of exception to the necessity for recourse to quasi-arbitration dispute settlement bodies is deduced from the limit of the consultant engineer or the dispute settlement committee to resolve disputes over international contractual agreements.

5. Cases resulting from merely legal claims

Conclusion

From our investigation it is possible to conclude that under Article 157 of the Constitution, as well as Articles 1-3 of the civil procedure code, the department of justice is considered as the competent authority for dealing with public claims. However, arbitration is a non-official jurisdiction recognized by the law which makes attempt to solve disputes by common people; moreover, the rendered judgment through arbitration is not only supported by the law but also it would be enforceable by the judiciary. Today, working skillful and experienced arbitrators in International Commerce Chambers (I.C.C) or arbitration teams in different parts of the world are making attempt to handle disputes between either legal or natural persons. Regarding the importance of time in contractual agreements, solving disputes between contractor and subcontractor has been anticipated by means of arbitration in the initial stages under Article 53 of general conditions of these contracts.

There is a very specific method for solving contractual disputes under Article 67-1 of general conditions of the international federation of consultant engineers. In fact, such a condition is taken into account as a certain agreement and its validity is confirmed under Article 10 of the civil code. The aforementioned condition anticipates resolving all possible claims between the contractor and subcontractor during execution of the contract in a stage right before attribution. Resolving disputes by the consultant engineering board has been supersede by attribution and dispute settlement committee. The difference with the two authorities is that the legal and economic independence of the committee members is secured by the international contracting parties. The arbitrator has more authority than the committee of dispute settlement. Not only have arbitrators the ability to accept or reject the committee's decision, but they can also amend or change it.

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